



# Memorandum

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Not on  
Supplement to  
Agenda Item No. 3(G)

**To:** Honorable Chairperson Barbara Carey-Shuler, Ed. D.  
and Members, Board of County Commissioners

**Date:** June 17, 2004

**From:** George M. Burgess  
County Manager

**Subject:** Supplemental Memorandum  
Contract Award Recommendation  
RFP for the Central Terminal  
Retail Program Developer  
RFP No. MDAD-02-02

The Miami-Dade Aviation Department presented a recommendation to reject the Request for Proposals for the Central Terminal Retail Program Developer for consideration by the Transportation Committee at its meeting of April 22, 2004. The Committee proposed amendments to the recommendation which included: (a) the rejection of the County Manager's recommendation to reject all proposals; (b) instruction to the County Manager to negotiate with Westfield Concession Management, Inc.; and, (c) to present before the Transportation Committee his recommendation and any substantial changes to the original contract resulting from the negotiations. The amended item was forwarded to and approved by the Board of County Commissioners at its May 11, 2004 meeting.

In response to (c) above, the following are four (4) substantive terms and conditions raised by Westfield, the Negotiation Committee's resolution of those concerns in terms of revisions to the Agreement, and the net effect or intention of the revisions.

- Items 1 and 2:** (1) The County has the express obligation to deliver all of the Premises to the Developer within the timeframes specified in the Agreement. Should the County fail to deliver all of the locations within such specified timeframes, the Minimum Annual Guarantee (MAG) would be prorated based on square footage actually delivered, or in the alternative, a day to day extension on MAG commencement.
- (2) The County be required to renegotiate the MAG on an equitable basis if the County deletes greater than 20 percent of the Premises.

**Agreement Revision:** The following was added to the last paragraph of Subarticle 3.01 – "Minimum Annual Guarantee" to address both Items (1) and (2):

The MAG payment is a requirement of this Agreement and will not be waived or altered in the event the Developer fails to sub-lease any Location(s), and/or any Sub-tenant fails to perform its financial obligation, and/or for any other reason any Locations are not beneficially occupied. Upon the failure of the Department to provide at least eighty percent (80%) of the total number of square feet of the Premises as set forth in Exhibit A (38,127

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square feet) within 365 days after the Effective Date of this Agreement, there shall be a credit applied to the MAG. Such credit shall be an amount equal to the percentage of the total MAG which is proportional to the amount of square feet actually delivered by the County as compared to the total number of square feet required by this Agreement to be included in the Premises. Such credit shall be extended on a monthly basis so long as such deficit in the square footage of the Premises shall exist. If more than twenty percent (20%) of the total square feet required by this Agreement to be included in the Premises is deleted by the Department, the MAG shall be proportionately reduced, and such reduction continued, as provided in the previous sentence. In either situation, the MAG shall be fully reinstated when square footage is added to the Premises to reduce the deficit to less than twenty percent (20%) of the total square footage set forth in Exhibit A.

Comment:

Concern was expressed that, should there be a delay by the Department in providing spaces, due to construction or other factors, the Developer should not be penalized. This was the compromise position that both parties felt was equitable.

Item 3:

The County defines Developer's Gross Revenues as all subtenant rents actually collected.

Agreement Revision: First paragraph of Subarticle 3.09 – "Gross Revenues" was revised as follows:

**3.09      GROSS REVENUES:**

The term "Gross Revenues", as used in this Agreement, means all Sub-tenant minimum annual guaranteed rents and percentage fees, if any, actually collected by the Developer from the Sub-tenants and any consideration of determinable value paid or payable to the Developer by any third party (for example, retail display allowances and other promotional incentives). However, the term "Gross Revenues" shall not include any and all pass-through charges such as Sub-tenant payments to the Developer for taxes, utilities, the Common Logistics Fee and contributions to the Marketing Program. In connection with such Developer's Gross Revenues, Developer hereby agrees to apply any security deposits received from its Sub-tenants to the payment of Sub-tenant minimum annual guaranteed rents and percentage fees, if any, due to non-payment by a Sub-tenant from time to time following applicable notice and cure periods provided in the Sub-lease agreement.

Comment:

The Developer felt that they could only pay based on collected monies. The Department needed assurance that either a minimum annual guarantee or a percentage of all monies from the Sub-tenant revenues, with limited exceptions, will be paid to the Department. The definition of gross revenues remained based on the collection of monies; however, another definition of Gross Receipts from Sub-Tenants was added to accommodate the Department's concern. Both sides compromised.

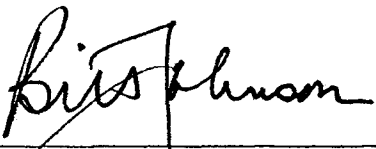
Item 4:

The County return the Developer's performance bond (less County's offset rights) should the Developer terminate the Agreement without cause on 365 days prior notice or upon mutual agreement of both parties.

Agreement Revision: None

Comment:

This item relates to Subarticle 1.06 – "Early Termination Without Cause". No substantive changes were made to this Subarticle as the existing provisions were deemed to be in the best interests of the County.

  
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ASSISTANT COUNTY MANAGER